

1 at some later time. I don't know. What's your inclination?

2 MR. FITZ-GIBBONS: Your Honor, I think we need to
3 discuss this with Mr. Schoenbohm at a later time.

4 JUDGE LUTON: Okay. Did you hear that,
5 Mr. Schoenbohm?

6 MR. SCHOENBOHM: I, I do hear it, but I sort of
7 wanted to get it on the record so I could --

8 JUDGE LUTON: Well, this conference -- we're not
9 taking evidence here today, Mr. Schoenbohm. That's something
10 -- that's why we have an evidentiary hearing. Then matters
11 will be, be put on the record. Today we're talking procedural
12 matters primarily. So, that is something that Mr. Schoenbohm
13 and the Bureau need, need to talk about. It, it may change
14 things considerably or it may not, I don't know, I have no
15 opinion about it, but that is something that certainly ought
16 to be explored and I'm certain that the Bureau will talk to
17 you about that, Mr. Schoenbohm. Is there anything else, sir?

18 MR. SCHOENBOHM: Interrogatories.

19 JUDGE LUTON: Um-hum. Well, it's tough to do
20 against, against the Bureau and even if permitted I don't --
21 well, what about interrogatories? I'm not going to say any
22 more.

23 MR. SCHOENBOHM: All right, but I just, again, want
24 to get back to the elements necessary, the burdens necessary
25 that I must meet. You say I must meet a burden but I don't

1 know what that burden is and --

2 JUDGE LUTON: Well --

3 MR. SCHOENBOHM: -- I just -- to expedite this
4 matter I could either, I could either meet the burden or I
5 cannot meet the burden and if I cannot meet the burden there's
6 no sense in wasting anybody's time if it's not a possible
7 burden to meet.

8 JUDGE LUTON: There isn't really an awful lot of
9 mystery about the burdens, Mr. Schoenbohm. It's to determine
10 -- the burden that Mr. Schoenbohm has is to present evidence
11 which would show, in light of the conviction described in the
12 designation order, that Mr. Schoenbohm is qualified to renew
13 his amateur service licenses. You don't see any standard
14 there in light of the conviction described above?

15 MR. SCHOENBOHM: The conviction per se does not
16 disqualify a person automatically from holding an amateur
17 license.

18 JUDGE LUTON: Well, that's argument that you make.
19 Apparently the Commission thinks that it might, otherwise
20 there would be no designation order here.

21 MR. SCHOENBOHM: It's, you know, my argument there
22 would be there's speculation?

23 JUDGE LUTON: That's --

24 MR. SCHOENBOHM: But to speculate on things that are
25 not defined is just -- it's going to be very, very difficult

1 to --

2 JUDGE LUTON: What are we speculating on that's not
3 defined? The hearing designation order takes the view that
4 conviction is a fact, it's happened. It talks about some
5 affirmances (phonetic) before courts of appeals. Now, you may
6 disagree with all that, but the view taken in the designation
7 order is that the conviction happened and the question that
8 arises is whether, since there was this conviction which
9 stands as a fact, insofar as the Commission is presently
10 concerned, you, Mr. Schoenbohm, ought to be permitted to renew
11 your amateur service licenses.

12 MR. SCHOENBOHM: And of course my argument, which
13 I've made in, in the brief is that it was an illegal
14 conviction.

15 JUDGE LUTON: That's fine. That's your argument.
16 But the standard is there. Now, it isn't --I don't know what
17 more you want.

18 MR. SCHOENBOHM: Well, the standard doesn't give --
19 it's an open-ended standard in other words.

20 JUDGE LUTON: Well, it's all we got in this case
21 anyway.

22 MR. SCHOENBOHM: All right. One other question. Is
23 it the -- is the important issue here the date of the
24 conviction or the date of the alleged offense?

25 JUDGE LUTON: I don't know. I'm not going to try to

1 say. You might talk it over with the Bureau.

2 MR. SCHOENBOHM: I mean, is the axis rea being
3 convicted or is the axis rea the alleged conduct associated
4 with the conviction? I mean, that's, that's crucial here
5 because of a jurisdictional problem.

6 JUDGE LUTON: Yeah, well --

7 MR. SCHOENBOHM: As explained to me, the Commission
8 would be without jurisdiction to proceed in this matter based
9 on the conduct in 1987. Or is it, is it the actual conviction
10 in a court which creates the presumption of unqualification?

11 JUDGE LUTON: You can read that designation letter
12 as well as we can, Mr. Schoenbohm. We are all being guided by
13 the same document here. You'll have to make your own judgment
14 about what is important, what does the designation order mean,
15 what does it say.

16 MR. SCHOENBOHM: My position is the designation
17 order is factually incorrect.

18 JUDGE LUTON: All right.

19 MR. SCHOENBOHM: And legally insufficient.

20 JUDGE LUTON: Okay. That's your position. We'll go
21 to trial just the same with you having those views.

22 MR. SCHOENBOHM: But can, can we go to trial on
23 those issues?

24 JUDGE LUTON: Yes, we can. We're going to do it
25 unless and until the designation order is changed that's our

1 charter.

2 MR. SCHOENBOHM: All right, fine.

3 JUDGE LUTON: All right. Well, thank you very much
4 gentlemen. We're concluded.

5 MR. FITZ-GIBBONS: Thank you.

6 MR SHHOENBOHN: Thank you.

7 (Whereupon, matter concluded at 9:35 a.m.)
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Herbert L. Schoenbohn
Name

WT 95-11
Docket No.

Washington, D.C.
Place

March 30, 1995
Date

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